IN THE HIGH COURT OF JUDICATURE AT MUMBAI

APPELLATE CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION NO. 105 OF 2007

Balaram Rambhau Jadhav .. .. .. Petitioner.

Versus

State of Maharashtra & Others. .. Respondents.

Mr. Rajiv Patil with Mr. R. D. Suryawanshi
for the Petitioner.
Mr. Vijay Sonpal, AGP for Respondent Nos.1 to 4.
Mr. R. S. Datar for Respondent No.5.

CORAM : SWATANTER KUMAR, C.J. &
DR.D.Y.CHANDRACHUD, J.

DATED : 23RD AUGUST, 2007

P. C.:

The Kulgaon – Badlapur Municipal Council, which is governed by the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short "Municipal Councils Act, 1965"), passed a resolution, being Resolution No. 212,

in its General Body Meeting held on 26th February, 2007. The resolution related to implementation of the scheme in regard to the management and handling of municipal solid wastes as per the report submitted by the 10 Members' Committee appointed by the Council. It also gave assent to call for tenders for sweeping in 10 Zones.

2. In April, 2007, tenders were invited by the Council and were accepted even at more than 1% to 9.99% rates than the estimated amount. Some persons took objections before the Collector and requested for suspension of resolution dated 26th February, 2007 passed by the Council. According to the petitioner, somewhere in May, 2007, the Collector called for the report from the Chief Officer and Sub Divisional Officer of the Council in furtherance to the complaint made to him. This report was submitted on 4th May, 2007. Pursuant to this report and in exercise of its powers under Section 308(1) of the Municipal Councils Act, 1965, the Collector suspended the resolution no. 212 passed by the Council. The Collector again, overlooking its earlier order, is stated to have passed another order dated 17th

July, 2007, directing the Council to implement the recommendations of resolution no.212 and the report of the Sub Divisional Officer dated 30th June, 2007, and the bids were to be negotiated.

3. The petitioner, who claims to be the resident of Village Eranjade, Badlapur (West), Taluka Ambernath, District Thane, forming part of one of the 10 Zones, has challenged this order of the Collector on the ground that the Collector has no power to pass the said order dated 17th July, 2007, and respondent no.5 should be directed not to implement the municipal solid wastes program in 10 Zones in terms of resolution no. 212 and to prepare a scheme of management and handling of municipal solid wastes either in 4 or 5 zones instead of 10 zones, so as to reduce the expenditure of the Council substantially.

4. At the very outset, we may notice that in the facts and circumstances of the case, it would hardly be said that the petitioner has a *locus standi* and the present writ petition is maintainable within the ambit and scope of Article 226 of the Constitution of India,

particularly, taking in view the prayers that have been made in the writ petition. The Court cannot sit over judgment of the expert body, who are working at the ground level after taking help of the technical experts. What should be the scope of the scheme for management and handling of municipal solid wastes squarely falls within the exclusive domain of the Council and is not a controversy which can be gone into and decided by the Court. Thus, we are of the view that the present writ petition itself is not maintainable and it is for the collective decision of the Council to take such steps as they deem fit and proper in the larger interest of the public.

5. Further, we may also notice that the order dated 17th July, 2007, is an administrative order passed by the Collector, based on the recommendations of the Sub Divisional Officer. This administrative decision has been taken in the interest of the Municipal Council. There can hardly be a plea raised in law that the Authority concerned would have no jurisdiction to consider / reconsider its administrative decision, particularly when it is taken in the larger public

interest and in the interest of the management of the Council. The Collector had called for the report. A detailed report was submitted to him. After considering the same, he came to the conclusion that the resolution no. 212, passed by the Council, needs to be implemented in all 10 Zones. It also needs to be noticed that on 6th July, 2007, the Collector had not cancelled the resolution no.212 dated 26th February, 2007 but had merely adjourned it. The order at Exhibit “H” to the writ petition, clearly shows that it was suspension of the resolution for a while, when the matter was being examined by the Collector. Under Section 308(1) of the Municipal Councils Act, 1965, he has power to suspend or even to prohibit the doing of any act in furtherance to such resolution. The Collector, in his wisdom, did not exercise the power either to suspend or prohibit the resolution but only adjourned it. Thus the order of 6th July, 2007, ultimately could merge into the order dated 17th July, 2007, wherein after examining the matter, the Collector directed that the resolution no. 212 dated 26th February, 2007, passed by the Council be implemented. We find no arbitrariness or illegality in the order dated 17th July, 2007, passed by the Collector.

6. In the circumstances, the writ petition has no merit and the same is dismissed while leaving the parties to bear their own costs.

Sd/-

(CHIEF JUSTICE)

Sd/-

(DR.D.Y.CHANDRACHUD, J.)